

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

GINA JENKINS,

Plaintiff,

v.

DONALD C. WINTER, et al.,

Defendants.

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No. 04-0966-CV-W-FJG

ORDER

Pending before the Court is Defendant Donald C. Winter's Motion in Limine on the Issue of Retaliation (Doc. No. 178). Defendant notes that this Court granted its motion for summary judgment as to plaintiff's retaliation claim in 2007. See Doc. No. 147. The portion of the Court's order granting summary judgment on the retaliation claim was affirmed on appeal. Jenkins v. Winter, 540 F.3d 742, 751 (8th Cir. 2008). Following remand on plaintiff's remaining sexual harassment claim, in plaintiff's Second Amended Complaint (Doc. No. 164) and Designation of Discriminatory Incidents (Doc. No. 162), plaintiff continues to refer to the evidence she used in reference to her now-dismissed retaliation claims. See Doc. No. 164, pp. 7-9, Doc. No. 162, pp. 2-4. Defendant argues that plaintiff is attempting to re-brand the allegedly retaliatory conduct as sexual harassment. Defendant further notes that the Eighth Circuit specifically described the facts in this case, noting the undisputed fact of plaintiff's statement that the harassment ended on December 4, 2003.¹

Plaintiff argues in response that the evidence referred to in Doc. No. 164, pp. 7-9 and Doc. No. 162, pp. 2-4 could constitute both harassment based on sex and retaliation. However, plaintiff did not make this argument in her earlier response to defendant's motion for summary judgment (Doc. No. 136). Instead, the Court agrees with defendant that

¹The evidence referenced in Doc. No. 164, pp. 7-9 and Doc. No. 162, pp. 2-4 is regarding events that allegedly occurred in January 2004 and later.

plaintiff appears to be attempting to re-introduce into this case incidents as to which summary judgment has already been granted. Accordingly, defendant's motion in limine (Doc. No. 178) is **GRANTED**, and plaintiff is precluded from mentioning at trial the events occurring after December 4, 2003, described in Plaintiff's Designation of Incidents under the heading, "CONTINUED HARASSMENT - U.S. NAVY" (Doc. No. 162, pp. 2-4).

IT IS SO ORDERED.

Dated: 07/16/09
Kansas City, Missouri

/S/FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge